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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/371,769	08/10/1999	ERWIN HACKER	514413-3765	9638
20999 7590 04/26/2011 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL.. NEW YORK, NY 10151				
EXAMINER				
PRYOR, ALTON NATHANIEL				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
04/26/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/371,769

**Applicant(s)**

HACKER ET AL.

**Examiner**

ALTON PRYOR

**Art Unit**

1616

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 79-116 is/are pending in the application.
- 4a) Of the above claim(s) 81-98, 105, 106, 109, 110, 113 and 114 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 99-102, 111 and 112 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's arguments filed 2/18/11 have been fully considered but they are not persuasive. See rejection below. Previous rejections and other issues not addressed below are withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 79,80,103,104,107,108,115 and 116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruegg et al (US 6180563; 1/30/01).

Ruegg teaches a method for controlling weeds in crops including cotton comprising applying to the crop a composition comprising trifloxysulfuron plus at least one compound including glyphosate, glufosinate, pyriithobac, sethoxydim, and clethodim. See abstract, column 1 line 5 – column 6 line 35, column 11 line 32 – column 12 line 21. Ruegg does not teach or suggest an explicit method or composition for controlling weed in cotton comprising applying to cotton a composition comprising glufosinate and clethodim. However, it would have been obvious to one having ordinary skill in the art to make instant invention comprising trifloxysulfuron plus glufosinate plus clethodim. One would have been motivated to do this because Ruegg suggests the combination of ingredients and the herbicidal effectiveness of the combination would have been broaden as a result of the combination. Applicant provides unexpected

results for the combination of 105 g a.s./ha pyriithobac plus 400 g a.s./ha glufosinate as shown on pages 31-35 of the specification. Thus, the invention comprising the combination of 400 g a.s./ha glufosinate plus 105 g a.s./ha pyriithobac is allowable. No other combination of glufosinate and pyriithobac is allowable since Applicants provide only this single result for the combination of glufosinate and pyriithobac. Applicants provide no unexpected (synergistic) data for the combination of glufosinate and clethodim. Thus, no combination of glufosinate and clethodim is allowable.

*Response to Applicants' Argument*

Applicants argue that Ruegg teaches synergistic mixtures of glyphosate or glufosinate with trifloxysulfuron rather than mixtures of glyphosate or glufosinate plus the instant B compounds such as clethodim. Applicants also argue that Dr. Hacker's declaration provide unexpected results for mixtures comprising glufosinate plus a representative examples of instant B herbicides. The Examiner maintains that the Ruegg teaches a synergistic combination of glufosinate with trifloxysulfuron. The Examiner maintains that Ruegg suggest herbicides such as clethodim can be added to the composition. Base on the teaching of Ruegg, it would have been obvious to add clethodim to the composition comprising glufosinate with trifloxysulfuron since Ruegg suggest the combination of glufosinate with trifloxysulfuron and clethodim (all are herbicides). Reugg reads on instant claims because instant claims employ "comprising" language which allows for the inclusion of trifloxysulfuron. The data in the specification and declaration for the combination of glufosinate and clethodim is not convincing of

unexpected results (the expected value is too close to observed value to declare synergy).

### ***Claim Objection***

Claims 99-102, 111, 112 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Unexpected data have been provided for the combination of glufosinate with sethoxydim, cycloxydim or pyriithiobac (See data in the specification and declaration).

### ***Elections Status***

The elected invention comprising glufosinate and cycloxydim is allowable. See unexpected results in Declaration and specification.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616